

LOCAL PLANNING AGENCY

MAY 24, 2006

1. ROLL CALL

The meeting was called to order at 7:21 p.m. Board members present were Chair Mike Bender, Vice-Chair Scott McLaughlin, Karen Stenzel-Nowicki, John Stevens and Mimi Turin. Also present were Councilmember Susan Starkey (arrived at 7:35 p.m.), Councilmember Bryan Caletka (arrived at 8:15 p.m.), Town Attorney Monroe Kiar, Planning and Zoning Manager Bruce Dell, Deputy Planning and Zoning Manager Marcie Nolan, Planner David Abramson, and Board Secretary Janet Gale recording the meeting.

2. PUBLIC HEARING

- 2.1 AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, CREATING DAVIE TOWN SECTIONS 12-34(y)(6), 12-34(y)(7), 12-34(y)(8), 12-34(y)(9), 12-34(y)(10) and 12-34(y)(11), REQUIRING EACH RETAIL GASOLINE STATION ON OR AFTER A SPECIFIED DATE TO BE EQUIPPED WITH A BACKUP POWER SYSTEM OR ALTERNATIVE PUMPING SYSTEM SO THAT EACH OF THE GASOLINE STATION'S FUEL PUMPS MAY BE OPERATED IN THE EVENT OF A POWER OUTAGE; PROVIDING THAT GASOLINE STATIONS LOCATED ON THE GROUNDS OF, OR OWNED BY ANOTHER RETAIL ESTABLISHMENT WOULD BE INCLUDED; PROVIDING FOR AUTHORIZATION TO EXEMPT CERTAIN GASOLINE STATIONS FROM THE REQUIREMENT OF THIS SECTION; PROVIDING FOR APPEAL; PROVIDING A PENALTY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Kiar advised of the intent of the ordinance as he was directed by the Town Council to create. It was his understanding that there were a number of retail gasoline establishments which were already enacting this voluntarily. Mr. Kiar pointed out that there was a bill "floating around" in the State Legislature that if passed, would sign into law and probably preempt this ordinance. He acknowledged that a deadline date of August 6, 2006, as stated in the ordinance may be difficult for the retail establishments to meet; however, the Town Council was interested in having this ordinance in effect for the upcoming hurricane season.

Chair Bender expressed that the concept was good, however, he wondered if an analysis had been done on the types and costs for the generators as they varied from a couple of thousand dollars to in excess of \$40,000 to \$50,000. Mr. Kiar advised that he was only asked to draft the ordinance and deferred to staff to see if they had been directed to undertake any such investigation. Mr. Dell advised that his division had not been asked to conduct any research. Chair Bender believed that this was something which should be enacted; however, without knowing the type of generators that were needed, he stated that "a lot of beef jerky and slurpees would have to be sold at private mom-and-pop stations in order to raise \$40,000."

There was a brief debate as to whether or not this ordinance applied to existing gas stations. It was later established that the ordinance applied to all retail gas establishments. Mr. Kiar advised that for existing establishments, there were provisions that would allow for exemptions, deferments, and alternative plans for hardship cases which could be presented to Mr. Dell. Ultimately, Council would have the authority to grant an exemption, deferment or extension.

Vice-Chair McLaughlin commented that the August 1st deadline to apply for exemptions this year was not even remotely possible.

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Mr. Kiar reported that other municipalities had allowed one, two, and even three years before their ordinances went into effect; however, Council asked that this be drafted in such a way that it would be ready for this hurricane season. As to whether or not August 1st was feasible, that was a question for staff, Council, and the Agency to decide.

Another question Chair Bender had was how to protect the pumps since they were very vulnerable to hurricane damage and yet as necessary as the generators. Mr. Dell indicated that he had not had a look at the ordinance and was under the impression that it would only involve newly constructed retail gas establishments. He commented that it was in ordinance form rather than Code language. Mr. Kiar responded that although it was an ordinance, it set forth the language for each Code provision. Ms. Nolan explained that staff had not had the chance to review the ordinance and would like to work with the Town Attorney's Office on it since it would eventually be in the Land Development Code. Mr. Kiar fully understood and explained that this was recently requested of the Town Attorney's Office by Council which was understandable in light of what had occurred last year.

Mr. Dell brought up the possibility that if the Town was requesting that a generator be placed on an established site, that site might not meet the setback requirements to put a permanent generator anywhere. While Mr. Kiar responded that he could not address that technicality, he agreed that it was a supposition on his part that any gas station owner would want to take whatever steps were necessary to insure that their canopies would not collapse or that their gas pumps would not blow away because it meant money to them.

Chair Bender reiterated that research was needed insofar as what the Town was asking these establishments to spend on generators as a couple of thousand dollars could be manageable whereas \$40,000 may put an establishment out of business.

Mr. Kiar reiterated that the requirements were clear for new construction and provisions were made for hardships for established businesses to ultimately be reviewed by the Council. Mr. Stevens commented that potentially, Council could be inundated on August 2nd with 50 hardship cases.

Vice-Chair McLaughlin raised the point of "where do you draw the line." First it would be gas stations, next it would be mandated for grocery stores, then the ice providers, and so on down the line. He commented that where did it become the difference between good business and forcing the businesses to adhere for the common public safety. Vice-Chair McLaughlin believed there was a fine line to draw and that staff and the Agency needed more time to absorb and research the proposal.

Ms. Stenzel-Nowicki questioned the types of generators and what was the "alternative power sufficient to operate pumps during times of emergency need," as there was a big difference in price regarding the power source. Mr. Stevens indicated that there were two choices – one being to provide a generator and the second was for a plan to have alternative power available. He advised that most of the larger oil companies were preparing a disaster plan for South Florida whereby the company would provide portable generators immediately after the emergency.

Councilmember Starkey addressed the Board and shared the knowledge she had learned by being on the Broward County Emergency Preparedness Committee. She mentioned the businesses and agencies which had taken the initiative to retrofit their facilities with new generators. Councilmember Starkey believed that new construction should be looked at first and secondly for existing gas establishments, they would need to show that they had a plan which would be reviewed by the Development Services Department. She stated that the Town would be flexible with the timeline for existing stations and that the plan for emergency preparedness would need to be in place, not that the plan had to be implemented by that date.

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Councilmember Starkey advised that a current House Bill was waiting to be signed by the Governor and she was hoping to have the Town draft this ordinance first. She knew the ordinance needed to be tweaked and was looking for feedback from the Agency. Councilmember Starkey indicated that if the House Bill was signed by the Governor, it would preempt what the Town was trying to accomplish.

As the established stations were required to have a plan, Mr. Dell asked if the State or County had set any criteria for an emergency plan and what options they may have. Councilmember Starkey responded negatively and indicated that there were certain details that were left for the "Department" to look after as a gas station's plan may say that it would be a couple of years before they could afford to put a generator in ground; however, in the meantime, as long as there was a long-range plan to comply, it would be an incentive.

Mr. Stevens opined that a criterion was set in the ordinance as they had to be able to pump gas within 48 hours.

Mr. Dell was curious to know how many gasoline establishments had implemented plans or emergency generators on their own and if a survey should be done. Councilmember Starkey responded that some had and suggested that a cover letter along with the ordinance should be sent to them asking them to come up with an emergency plan and work with the Town on what they think they could achieve.

The Agency asked what kind of timeline it was looking at to have the ordinance pass. Councilmember Starkey indicated that the Governor could sign the House Bill any day and wanted to have a program in place for the Town in case the new law would exempt municipalities from doing it in the future.

Ms. Turin stated that this ordinance was taking an initiative, taking a lead in providing direct basic services and that it had to start somewhere. As the process would involve public hearing in order to solicit input from other people so that the finished product would eventually meet as many needs as possible, this would be an excellent start.

Ms. Stenzel-Nowicki suggested that the August 1, 2006, date be clearly defined for new construction seeking a Certificate of Occupancy; however, she felt it may present a hardship on an existing smaller establishment and that the Planning and Zoning Division and Council may be inundated with applications to defer. Mr. Dell responded that since his Division had the discretion, he would advise those establishments to submit their plans and then process them in a timely manner. Ms. Stenzel-Nowicki contended that somewhere in the ordinance, it should be indicated that there be allowed some leniency or provision for substantially renovated and existing stations. She asked if the gas stations in the Town had been noticed in terms of this ordinance. Mr. Kiar doubted it as the ordinance was being drafted.

Vice-Chair McLaughlin asked if staff knew how many stations were under construction as he was aware of only one. Mr. Dell concurred and advised that he would ask for a list from Occupational Licenses as soon as possible. Vice-Chair McLaughlin indicated that he would like to see that the gas stations were notified. He also suggested that a meeting be set up with Port Everglades so that part of the emergency plan would include that tanks were filled so many days prior to a storm so that the gas stations would be capable of operation. It would not do them any good if the stations were up and running but did not have any gas. Councilmember Starkey recalled that in the past, there had been a problem in getting gasoline to the stations. She advised what steps had been taken with Port Everglades and FP&L to assure that the system would function in the future.

Chair Bender asked if anyone wished to speak for or against this item. As no one spoke, the public hearing was closed.

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Mr. Stevens indicated that given the timeliness of the ordinance, it should be moved forward with the staff recommendations and modifications made to it in order for Council to make a decision between the first and second readings.

Mr. Stevens made a motion, seconded by Chair Bender, to approve. In a roll call vote, the vote was as follows: Chair Bender – yes; Vice-Chair McLaughlin – yes; Ms. Stenzel-Nowicki – yes; Mr. Stevens – yes; Ms. Turin – yes. **(Motion carried 5-0)**

3. OLD BUSINESS

Chair Bender expressed his dissatisfaction with an ordinance that had been presented by Assistant Development Services Director/Engineer Larry Peters, at the previous meeting. The ordinance regarded amending the Code to require a monetary contribution to the Town Local Road and Traffic Calming Improvement Fund. His issues were that it was not clear who the author of the ordinance had been; and secondly, Chair Bender had yet to confirm, but had been told, that a developer had already been advised that there would be an additional cost of \$20,000 to start his project because of this new ordinance that had not yet been approved. It appeared to Chair Bender that this was a “slush fund” being set up and the Town did not need any more bad press. He maintained that there were no answers to where the money would be going nor was there accountability. Chair Bender opined that a major project with hundreds of parking spaces would amount to contributions in excess of hundreds of thousands and possibly millions of dollars. He wanted to know who came up with the scale for the parking spaces and he had a problem with Town staff implementing fees on top of fees which in his opinion was a tax increase. Chair Bender believed that the Cost Recovery Program in the Town was working fine. He wondered if other department heads would be presenting ordinances with scales for added fees whenever they could not work within the budget. Chair Bender expressed that if people were being told that they would have to pay these fees without the ordinance having been approved, it was “just flat illegal” in his opinion. He intended to find out if it was true and ask that person to come forward.

Mr. Stevens indicated that he was bothered most about the lack of proper procedure as Mr. Peters had stated that he already started collecting these fees which added up to be a substantial amount of money. When Mr. Stevens had asked Mr. Peters what would happen if Council did not approve the ordinance, Mr. Peters replied that the Town would have to figure out a way to pay them back. Subsequently, Mr. Stevens spoke with several individuals who represented builders in the community and who had informed him that they could not proceed unless they provided the funds to the Town without the passage of the ordinance. Mr. Stevens stated that the ordinance process was to first go through this Agency then to Council for its approval. He continued that for an employee to institute an additional tax without the approval of the governing body of the Town was inappropriate.

Ms. Stenzel-Nowicki recalled that Mr. Peters did explain that there were monies collected by Broward County that was given to the Town and the County was no longer doing so, and that was where the \$140,000 came from. Mr. Stevens interjected that Mr. Peters used that for his rationale for having this fund; however, as he understood it, the \$140,000 was from collecting fees from current construction. Vice-Chair McLaughlin corrected Mr. Stevens as he recalled that some of the \$140,000 came from the County as well as the current applicants. His concern was liability on the Town if there was not a proper procedure or a proper method to spend that money, what liability did the Town have with repaying that money within a certain time period. There was no plan in place and these questions were not answered. Ms. Stenzel-Nowicki pointed out that the ordinance went well beyond traffic calming and recalled that there was extensive discussion regarding the amount of money charged for single family homes.

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Chair Bender agreed that residences should not be put in “a hard place;” however, he did not think it a good idea to scare off good businesses either. He commented that different departments had to work within the budget and should not be expecting that someone else pave their way when they needed more money.

Ms. Nolan advised that the Land Development Code clearly stated under the impact improvements that the Town had the ability to collect from a new developer for those costs that resulted from the impact of that development upon the Town’s local grid network. She explained that staff was trying to get an impact study in place to serve as the legal mechanism in order to create a dedicated funding source to improve the local roads, not at the expense of the existing taxpayers, but because of the new development that would be decreasing the longevity of those existing roadways. Ms. Nolan went on to say that Mr. Peters was in the process of applying for an impact fee study. The new development, by the County, by State concurrency, and by the Town’s land development regulations, required that the developer mitigate their impact upon the Town’s existing local roads. A road master plan needed to be established and when it was in place, it would become the appropriate mechanism to have the developer pay for an identified road improvement. Although the mechanism was not perfect, in an emergency situation, it had to start somewhere and Mr. Peters was trying to start that process.

Chair Bender believed that this meant a business would be taxed twice and he referenced Rick Case Hyundai as an example since that dealership had been approved for a new parking garage.

Ms. Nolan asked Chair Bender if he knew the price for one linear foot of a guard rail which was used to make the C-11 Canal safer. She went on to explain that in order to keep our canals, streets and roads safe, it cost millions of dollars which was not budgeted for. Ms. Nolan continued that the existing homeowner was not creating the impact, it was the new development coming in that was creating the impact. Chair Bender maintained that what was being created were fees on top of fees on top of fees, and that was not going to attract good businesses to the Town.

Mr. Stevens indicated that until the ordinance was brought forward, this Agency had not realized what the Town was doing. He had not known whether or not there was the authority to do this, only that he was notified at the last meeting that this was not in the Code, that the Town was collecting for it, and now “we want to fix it.” Ms. Nolan countered that it was authorized in the Land Development Code and that attorneys had paid the fees when they were shown the Code. She indicated that staff wanted to legalize the mechanism and would be bringing back this item when the impact fee study was done. Ms. Nolan advised that staff was working to resolve the issue of it being so open ended and hoped to present a rational connection between what the Town would propose to charge and what improvements the Town proposed.

Ms. Turin stated that what Ms. Nolan had explained tonight was helpful and if it had been presented this way at the last meeting, the Agency’s reaction would have been quite different. This led to a discussion in which Agency members expressed their discontent with the previous presentation and their discomfort with an ordinance that had so many issues that were not clarified. Mr. Dell understood the Agency’s reaction and explained staff’s perspective which was to try and correct a 30-something-year-old problem as well as quantify the impact of new developments. He indicated that once the master plan was implemented and the traffic studies were done, most developments of a certain size would be required to have a traffic study to show what their impact would be. Their impact would then be quantified based on whether they needed lane improvements, traffic lights, etcetera. They would then be expected to pay their pro-rata share for the improvements. That fee may be classified as infrastructure improvements and it would be justified in time once the master plan was in place.

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Chair Bender stated that he would like to see a breakdown of what everyone was being charged and that there was a way to track the money. Mr. Dell agreed that it should be shown, that there were funds created and that they were to be specific for the improvements for which they were collected. He provided examples of how it would work. Ms. Nolan advised that there used to be a system under the County's "umbrella" but that had fallen away for most of the Town.

Ms. Stenzel-Nowicki concluded by summarizing that this was a concept that was a long overdue necessity and needed to be "fine-tuned" from what had been presented at the last meeting. Vice-Chair McLaughlin added that it needed a large scale plan and some mechanisms to move it forward. Chair Bender added that he did not want the Town to fall into a trap where it would scare away business.

4. NEW BUSINESS

There was no new business discussed.

5. COMMENTS AND/OR SUGGESTIONS

There were no comments and/or suggestions made.

6. ADJOURNMENT

There being no further business and no objections, the meeting was adjourned at 4:45 p.m.

Date Approved: _____

Chair/Agency Member